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February 3, 2014

## **CORRECTED VERSION**

Hon. Alison J. Nathan  
United States District Judge  
United States District Court  
40 Foley Square, Room 2102  
New York, NY 10007

Re: *In re M/V MSC FLAMINIA* – SDNY No. 12 Civ. 8892 (TPG)

Dear Judge Nathan,

Pursuant to the October 18, 2013 Order, we write as attorneys for the Plaintiffs Conti 11. Container Schiffahrts-GMBH & Co. KG MSC “FLAMINIA” (“Conti”) and NSB Niederelbe Schiffahrtsgesellschaft MBH & Co. KG (“NSB”), who are the owner and operator of the M/V MSC FLAMINIA in the above-referenced action, to submit this joint letter on behalf of all of the parties.

### **Purpose**

Specifically, the purpose of this letter is to advise the Court of the progress that has been made in discovery and provide a proposed schedule for completing discovery. As set forth in greater detail below, discovery is well underway and depositions are in the process of being scheduled. However, more discovery must be completed before a realistic date can be proposed for the completion of fact discovery.

### **Investigation of the vessel**

At the time of the last conference on October 18, 2013, the MSC FLAMINIA was still at a shipyard in Romania for the purpose of removing contaminated firefighting water and debris from the cargo holds, allowing experts access to investigate the cause of the fire and explosion, and ultimately having the vessel repaired. Unfortunately, the Romanian government and the shipyard itself, among other things, caused constant delays, would not allow all of the liquid to be discharged from the vessel, and limited the parties’ ability to store debris as evidence. After weeks of setbacks, the Plaintiffs arranged for the MSC FLAMINIA to be transferred from Romania to another shipyard in Denmark.

The vessel arrived in Denmark in late November and the investigation began in earnest with the assistance of a new shipyard that was more accommodating to the needs of the parties. After weeks of 24 hour operation, multiple teams of fire experts completed their initial inspection of the debris in the cargo holds. About 30 cargo containers were removed and placed in segregated storage along with other selected vessel fittings and pieces of structure. This jointly-designated material, including samples of certain cargoes, will be examined in more detail by the experts and a testing facility pursuant to joint agreement.

With the debris removed, the vessel has just set sail for Romania to begin repairs. The experts are still discussing whether additional items must be removed from the vessel for further examination. Such items would be removed and/or examined in Romania.

### **Cross-claims and counterclaims**

By the end of November 2013, most parties served cross-claims and counterclaims, respectively, against the companies related to the Divinylbenzene (“DVB”) chemical cargo and the Diphenylamine (“DPA”) chemical cargo, respectively.

Recently, claims against Rubicon, LLC and Huntsman Corporation were, or will soon be, voluntarily dismissed. In addition, Deltech has filed claims against Newport Tank Containers, Inc.

### **Prior Discovery**

As already reported, in December of 2012, MSC served its Rule 26 initial disclosure with nearly 53,000 pages of documents and additional electronic files. MSC also responded to a lengthy set of document requests (i.e., 75) from Messrs. Hill Rivkins. Likewise, in February of 2013, Plaintiffs Conti and NSB served its initial disclosure with over 8,500 pages of documents and dozens of electronic files, and responded to the same lengthy set of document requests. Both MSC and the Plaintiffs will be producing additional responsive documents shortly.

### **Rule 26 Disclosures**

As of the November 18, 2013 deadline, all parties have provided Rule 26 Disclosures. In the aggregate, several hundreds of pages were exchanged between the parties. Of the disclosures made, some were more informative than others. As a result, discovery pursuant to FRCP Rules 33 and 34 is required before the depositions of certain parties will be possible.

### **Voluntary Discovery**

In December of 2013, upon request by the Plaintiffs, certain parties provided construction plans and detailed plans for the fittings to certain tank containers that had been stowed in the No. 4 Cargo Hold of the MSC FLAMINIA. These disclosures were done on an expedited and voluntary basis in order to make available information to the experts as they examined the debris on the ship. Collectively, a few hundred pages of documents were provided.

### **Document Demands and Interrogatories**

As of January 8, 2014, hundreds of discovery requests and interrogatories were exchanged between the parties. Although some of these requests had been jointly drafted and served in an effort to make the discovery process more efficient, there were still a significant amount of requests for each party to address.

Pursuant to a joint request to this Honorable Court, the parties have until March 14, 2014 to answer the outstanding discovery requests.

As an aside, the responses to the discovery requests served by Chief Officer Siuta's estate on Plaintiffs are in the process of being answered over the course of the next few days.

### **Depositions**

The depositions of five of Plaintiff NSB's shore side personnel have been noticed for the week of March **3rd** in New York. As noted above, NSB is the operator of the MSC FLAMINIA, i.e. provides the crew and maintains the vessel. We expect that more depositions will be scheduled after additional documents are produced pursuant to the formal document demands and discovery now due on or before March **14th**.

### **Summary**

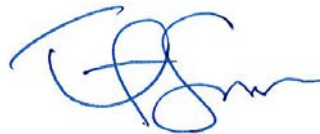
In short, the parties continue to cooperate to produce requested documents and information. Depositions are beginning to be noticed. Once the current discovery demands are satisfied, then various persons with relevant knowledge can be identified. This will allow the majority of the depositions to be conducted over the course of the upcoming months. Subsequently, the parties will be in a better position to estimate when fact discovery can be concluded.

Accordingly, the parties will provide a joint letter update to the Court on or before June 2, 2014.

Thank you in advance for your consideration. If there are any questions, please do not hesitate to contact us.

Respectfully submitted,

CHALOS O'CONNOR, LLP

A handwritten signature in blue ink, appearing to read 'T. Semenoro', with a stylized flourish at the end.

Timothy Semenoro

CC by ECF and E-mail to all counsel of record